THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.28589 of 1997

Dated 07-03-2007

Between:
G.L.Thayaru.

..... PETITIONER

AND

The Chief Post Master General A.P.Circle, Hyderabad & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.28589 of 1997

O R D E R:

The action of the respondents, in rejecting the medical claim of the petitioner vide letter dated 02-06-1997, is questioned in this writ petition as arbitrary and illegal and a consequential direction is sought for reimbursement of the medical expenses incurred by the petitioner.

The petitioner's husband, while working as a Sub-Post Master at Kavali, was hospitalized. It is specifically stated, in the affidavit filed in support of the writ petition, that the Civil Assistant Surgeon, Government Hospital at Kavali referred his case for treatment at the Apollo Hospital, Chennai as the petitioner's husband, Sri G.V.Subrahmanyam, was suffering from severe Jaundice and Chronic Hepatocellular failure. The distance from Nellore to Chennai, by road is three hours. The petitioner's husband was rushed to Apollo Hospital on
02-08-1995, where he died on 05-08-1995. The petitioner submitted a claim for reimbursement of medical bills on
01-09-1995. On the ground that the said application was in manuscript, and was not in the prescribed form, the application was returned and the petitioner re-submitted the application again on 16-08-1996, which was again returned on 10-02-1997 on the ground that one of the medical bills for Rs.2,234.60ps. was not enclosed thereto. Thereafter, the impugned proceedings came to be passed on 02-06-1997 informing the petitioner that the medical bill of her late husband was being returned as Apollo Hospital was not authorized for getting any type of treatment and she had not preferred her claim within

three months from the date of discharge from the hospital.

In the counter affidavit, the fact that the application seeking reimbursement was submitted in manuscript on
01-09-1995 is admitted. Since the petitioner's husband died in Apollo Hospital at Chennai on 05-08-1995, the original application, claiming reimbursement of medical expenses, filed on 01-09-1995, was well within the three months time limit prescribed.

On the ground that the application was in manuscript, it was returned and there seems to have been some delay in re-submission of the application. The limitation of three months prescribed under the rules is for making a claim for reimbursement and not for re-submission of the application form after compliance of the objections pointed out by the department. It must, therefore, be held that the application was made within the prescribed time and the conclusions to the contrary, in the impugned proceedings dated 02-06-1997, held invalid.

The next question, which arises for consideration, is whether the petitioner is entitled for being reimbursed the medical expenses incurred on the treatment of her husband at Apollo Hospital, Chennai.

It is the specific case of the respondents, in the counter affidavit, that the Apollo Hospital at Chennai has been recognized, vide proceedings dated 02-01-1985, as a referral Hospital only in respect of Coronary By-pass Surgery, and not for Jaundice and Chronic Hepatocellular failure, for which the petitioner's husband underwent treatment. According to the respondents, there exists facilities for advanced treatment in the Central Government recognized Hospitals like S.V.I.M.S. at Tirupati and N.I.M.S at Hyderabad.

As noted above, the distance between Nellore and Chennai is

3 hours, whereas, the distance between Nellore and Hyderabad is 10 hours. The specific assertion, in the affidavit filed in support of the writ petition, that the petitioner's husband had to be rushed to Apollo Hospital in emergency has not been denied in the counter affidavit. The facts speaks for themselves. The petitioner's husband was examined by the Civil Assistant Surgeon, Government Hospital, Kavali, on

01-08-1995, and was referred to the Apollo Hospital at Chennai where he was admitted the very next day i.e. on 02-08-1995 and three days thereafter, he passed away at Apollo Hospital, Chennai i.e. on 05-08-1995. In similar circumstances, where emergency aid was required to be provided, the Supreme Court in **Suman Rakheja v. State of Haryana**[1] observed:-

> "……..The appellant is the wife of a deceased government servant who had undergone treatment in the Apollo Hospital, New Delhi, which was a private hospital and which was not recognized/approved at that time. For the treatment in that hospital the appellant incurred expense to the tune of Rs.6,01,166/- and the appellant, by way of an application prayed for reimbursement of the medical expenses incurred, but the same was declined by the State, on the ground that the hospital wherein the appellant's husband had undergone the treatment was not an approved hospital.
>
> Counsel for the appellant submitted that in similar case (Annexure P-4) i.e. by the order of the High Court of Punjab and *Haryana in Sant Prakash v. State of Haryana (CWP No.588 of 1998 (P&H)*) wherein in an emergency case the patient had to be immediately admitted in hospital, the relief has been granted. In the present case also the appellant's husband had to be rushed to the private hospital because he had developed a paralytic stroke on the left side of the body, as there was blood clotting on the right side of the brain and therefore, was admitted in an emergency condition in the hospital. In the present case the discharge certificate also shows that the case was an emergency one. I n *Sant Prakash case,* the Division Bench held that the petitioner therein would be entitled to 100% medical expenses at the AIIMS rates and 75% of the expenditure in excess thereto……."

Following the aforesaid judgment of the Supreme Court, it must necessarily be held that the petitioner is entitled for being reimbursed the medical expenses, which was incurred for the

treatment of her husband at Apollo Hospital, Chennai, to the extent he was entitled to under the rules. The impugned order dated 02-06-1997 is set aside and the matter is remanded to the second respondent to examine the claim for medical reimbursement submitted by the petitioner and reimburse the medical expenses incurred to the extent to which the petitioner's husband late Sri G.V.Subrahmanyam, a Sub-Post Master at Kavali prior to his death, was entitled to. The entire exercise in this regard culminating in payment of the amount shall be completed within a period of three months from the date of receipt of a copy of this order.

Smt N.Shoba, learned counsel for the petitioner, would place reliance on **Devindar Singh Shergil v. State of Punjab,**[2] to contend that the amount due to the petitioner, towards reimbursement of medical expenses, should be paid to her along with interest at 15% p.a. It must not be lost sight of that the petitioner was held disentitled to her claim of medical reimbursement, on a strict construction of the rules, and it is only in the light of the judgment now passed that the respondents are required to pay the amount. The power which the Supreme Court exercises under Articles 136 or 142 of the Constitution of India to render complete justice is not, ordinarily, exercised by the High Court under Article 226 of the Constitution of India.

The Writ Petition is accordingly disposed of leaving it open to the petitioner to seek adjudication of her claim for payment of interest in appropriate proceedings. However, in the circumstances, without costs.

07-03-2007

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[1] 2004(13) SCC 562

[2] 1998(8) SCC 552